

**Notice of Allowability**

Application No.

10/780,426

Examiner

Robert W. Amareld, Jr.

Applicant(s)

SIMONSON, PETER M.

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3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 1/9/06.
2. ☒ The allowed claim(s) is/are 1-16.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

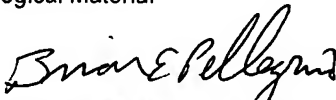
\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 5/10/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 2/17/06
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

  
**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group I, the method claims 1-16 in the reply filed on 1/9/06 is acknowledged.

Claims 17-87 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/9/06.

During a telephone conversation with Gregory Nelson on 1/13/06 a clarification of election was made to prosecute the invention of the method, Group I, claims 1-16 and the species of Figures 37-38 (Species K), where the species reads on claims 1-4, 8-16. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5-7 & 17-87 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

This application is in condition for allowance except for the presence of claims 17-87 directed to the apparatus Group II non-elected without traverse. Accordingly, claims 17-87 have been cancelled.

### ***Allowable Subject Matter***

Claims 1-4 & 8-16 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: In the prior art, Yuan (US Pat# 5437669) discloses a spinal fixation system of

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similar function, having two rods (53) attached to two vertebrae and a sliding connector (50), however Yuan does not disclose a slidable connector positioned between a first point where the first rod is coupled to the first vertebrae and a second point where the second rod is coupled to the second vertebrae.

Claim 1 is generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 5-7, directed to the species of Figures 37-38 are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claims 5-7 are allowed, for a complete set of claims 1-16 now being allowed.

#### EXAMINER'S AMENDMENT

The application has been amended as follows:

In claim 1 the limitation of "having at least two apertures" has been added to the connector as shown below in line 5 of claim 1.

*slideably coupling the first rod and the second rod together at a first connector **having at least two apertures,** positioned between a first point where the first rod is coupled to the first vertebrae and a second point where the second rod is coupled to the second vertebrae*

In claim 2 in line 2 "a" has been deleted in "a first aperture" and "the" has been added to recite "the first aperture" ; in line 4 "a" has been deleted in "a second aperture" and "the" has been added to recite "the second aperture", as shown below

2. The method of claim 1, wherein slideably coupling the first rod and the second rod together at a connector comprises inserting a portion of the first rod through ~~a~~ the first aperture in the connector forming a slideable connection and inserting a portion of the second rod through ~~a~~ the second aperture in the connector.

Claims 17-87 have been cancelled .

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ferree, US Pub# 20050261682- vertebral shock absorbers; Yuan, US Pat# 5437669-spinal fixation; Lozier, US Pat# 5437671- spinal rods; Ulrich, Us Pat# 5425732- spondylodesis implant; Munting, US Pub # 20030144665; Knox, US Pat# 6332887-spinal fusion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Amareld, Jr. whose telephone number is 571-272-6170. The examiner can normally be reached on M-F 9am -5pm EST.

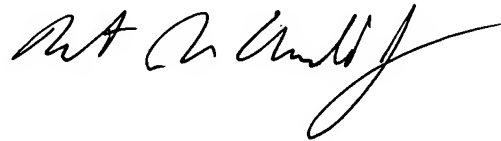
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert W Amareld, Jr.  
Examiner  
Art Unit 3738

RWA



**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**

